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December 27, 2024

VIA CM/ECF

Nwamaka Anowi
Clerk of Court
United States Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219

Re: *Khashoggi v. NSO Group Technologies Ltd.*, Nos. 23-2234(L) & 23-2241 —
response to Appellant’s notice of supplemental authority (ECF 56)

Dear Ms. Anowi:

Pursuant to Rule 28(j), Appellees submit this response to Appellant’s notice of authority regarding the summary-judgment decision in *WhatsApp Inc. v. NSO Group Technologies Ltd.*, 2024 WL 5190365 (N.D. Cal. Dec. 20, 2024). *WhatsApp* was wrongly decided and not well reasoned, and that fact-bound district court decision is not binding or even persuasive authority in this Court. In any event, the decision does not support personal jurisdiction here.

WhatsApp held that “the evidentiary record [in that case] supports the conclusion that defendants are subject to personal jurisdiction” in California because the “evidentiary record before the court ... show[s] that defendants’ Pegasus code was sent through [WhatsApp’s] California-based servers.” *Id.* at *3. As a result of “an evidentiary sanction,” the court further “conclude[d] that [this] use of [WhatsApp’s] California-based servers was a purposeful choice.” *Id.* at *6. Neither holding helps Appellant here because *WhatsApp*’s case-specific factual findings are outside of Appellant’s complaint and no sanctions have been imposed here from which a court might find purposeful direction.

Appellant suggests *WhatsApp* supports her theory that jurisdiction is proper in Virginia because her devices were allegedly accessed in Virginia. But *WhatsApp* does not change that Appellant “waived this [theory]” and has failed to “allege any facts establishing that her data *was* ‘first captured and rerouted’ in Virginia.” Resp. Br. 29; *see id.* at 24-29.

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Appellant also wrongly suggests that *WhatsApp* “refute[s]” Appellees’ claim that the Pegasus technology cannot be ““used against U.S. mobile phone numbers or devices within the geographic bounds of the United States.”” ECF 56 at 2 (quoting Resp. Br. 8). *WhatsApp* did not find that Pegasus was *used* in California; it found only that some messages containing Pegasus code “*passed through* the [California] servers,” 2024 WL 5190365 at *6 (emphasis added)—on the way to accessing devices *in foreign countries* by “foreign government customers.” *WhatsApp Inc. v. NSO Grp. Techs. Ltd.*, 17 F.4th 930, 933-34 (9th Cir. 2021). As Appellees correctly explained, the Pegasus technology cannot be used in the United States. *See* Resp. Br. 8.

Respectfully submitted,

/s/ Ashley C. Parrish
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Counsel for Appellees-Cross-Appellants

CC: All counsel of record (via CM/ECF)